

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of

Amendment of Section 73.606(b)  
 of the Commission's Rules, the  
 Table of Allotments for  
 Television Broadcast Stations  
 (Boise, Idaho)

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RM-9039

**RECEIVED**

JUL 17 2000

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

**AMENDMENT TO PETITION FOR RULE MAKING**

Respectfully submitted,

**KM Communications, Inc.**

By: Jeffrey L. Timmons, Esq.  
 Its Attorney

IRWIN, CAMPBELL & TANNENWALD, P.C.  
 1730 Rhode Island Avenue, N.W., Suite 200  
 Washington, D.C. 20036-3101

(202) 728-0400 telephone  
 (202) 728-0354 facsimile

July 17, 2000

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## **EXECUTIVE SUMMARY**

KM Communications, Inc. ("KM"), a 100% female- and minority-owned applicant, would receive a construction permit to construct a new full power broadcast station on analog Channel 14 serving Boise, Idaho, under a universal settlement first filed with the Commission almost 5 years ago, in December 1995, which is still pending. In an effort to avoid concerns raised for the potential for interference to existing land mobile radio stations on spectrum adjacent to television Channel 14, KM first suggested that the Commission substitute an alternate channel for Boise on its own motion, and then to move matters along KM filed a petition for rule making about 4 years ago proposing such a channel substitution, which also remains pending.

This amendment to KM's pending petition for rule making is filed primarily to demonstrate that no interference would be caused to any DTV station allotment, authorization, application or petition for rule making. The amendment also demonstrates that, under express Commission precedent, the currently proposed substitution of analog Channel 39 for Channel 14 is permitted consistent with the Class A television legislation, and takes precedence over and must be protected from interference from any Low Power Television ("LPTV") stations, including LPTV stations that may have filed for or have an approved certificate of eligibility to apply for Class A status. The amendment also addresses that there are no procedural hurdles for the Commission to overcome to address the relief requested herein, either in response to KM's petition or on its own motion.

Last, this amendment pleads with the Commission to get this process moving, and once again requests a meeting with the relevant Commission staff on this matter.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.606(b)	)	
of the Commission's Rules, the	)	RM-9039
Table of Allotments for	)	
Television Broadcast Stations	)	
(Boise, Idaho)	)	
To: Chief, Allocations Branch		

**AMENDMENT TO PETITION FOR RULE MAKING**

KM Communications, Inc. ("KM"), by its attorney, and pursuant to Section 1.401 of the Commission's rules, 47 C.F.R. § 1.401, and the Commission's Public Notices opening a window for filing petitions for rule making to change analog television allotments that may conflict with digital television ("DTV") station allotments, authorizations, applications, or rule making proposals,<sup>1/</sup> respectfully submits this third amendment (the "Third Amendment") to its petition for rule making filed on and pending since July 10, 1996 (the "Petition"), as previously amended on or about May 15, 1997 (the "First Amendment") and October 19, 1999 (the "Second Amendment"), requesting the Commission to amend Section 73.606(b), 47 C.F.R. § 73.606(b), the analog Television Table of Allotments for television broadcast stations, to substitute a alternate channel for Channel 14 at Boise, Idaho, and to authorize KM to amend its pending application for

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<sup>1/</sup> See Public Notice, Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations, DA 99-2605 (released November 22, 1999)(the "Amendment Public Notice"); see also, Public Notice, Window Filing Opportunity For Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000, DA 00-536 (released March 9, 2000).

Channel 14 at Boise (File No. BPCT-941215KF) to specify operation on the alternate channel without subjecting the application to a new cut-off. In support of this Third Amendment to the Petition, KM submits the following:

## **I. INTRODUCTION AND BACKGROUND**

1. KM requests that all statements and arguments made in its Petition and any previously filed amendment be incorporated herein by reference as if restated fully herein, except to the extent expressly amended by a subsequently-filed amendment.

2. KM submits this Third Amendment in response to the Amendment Public Notice to supplement the Engineering Report<sup>2/</sup> filed with the Second Amendment with the current engineering supplement attached hereto as Exhibit B,<sup>3/</sup> to demonstrate once again that KM's proposed substitution of analog Channel 39 for Channel 14 would not cause interference to any

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<sup>2/</sup> See Engineering Report of Cohen, Dippell and Everist, P.C., dated September 1999, attached hereto as Exhibit A (the "Engineering Report"). The Engineering Report and the Second Amendment were filed after the Commission's last reconsideration order in the DTV proceeding, see Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Order, 14 FCC Rcd 1348 (1998) (the "DTV Second MO&O"), to demonstrate that KM's proposed substitution of analog Channel 39 for Channel 14 would not cause interference to any DTV station allotment, authorization, application or petition for rule making. This Third Amendment addresses and brings current this same issue, specifically in response to the requirements of the Amendment Public Notice, as well as other issues.

<sup>3/</sup> See Engineering Report of Cohen, Dippell and Everist, P.C., dated July 2000, attached hereto as Exhibit B (the "Engineering Supplement"). The Engineering Supplement also addresses the potential for interference between KM's proposed analog Channel 39 allotment substitution and any Low Power Television ("LPTV") stations that may have a certification for eligibility for Class A status that has been approved by the Commission.

DTV station allotment, authorization, application or petition for rule making. This Third Amendment also addresses Class A issues, as well as other timing and procedural issues.

**A. KM's Channel 14 Application, And Land Mobile Radio Petition To Deny**

3. By way of background, KM filed its application for a construction permit for a new commercial television station on Channel 14 at Boise, Idaho (File No. BPCT-941215KF) on December 15, 1994. On February 2, 1995, the Commission released a Public Notice accepting KM's application for filing and setting a March 20, 1995 cut-off date by which other parties could express interest in the proposed allotment. See Public Notice, Report No. A-188 at 2 (released February 2, 1995). International Television Network, Inc. ("ITN") was the only party to file a competing, mutually-exclusive application (File No. BPCT-950320KE) before the cut-off date.

4. In addition to the ITN application, a Petition to Deny was filed by certain land mobile radio licensees, claiming that KM's proposed operation of the Boise station would cause objectionable interference to their existing operations. KM filed an Opposition to this Petition, and the petitioners subsequently submitted a Reply.<sup>4/</sup> In its Opposition, demonstrated that well-established Commission rules and precedent require the grant of its application for Channel 14.<sup>5/</sup>

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<sup>4/</sup> See Petition to Deny filed March 20, 1995 ("Petition to Deny"), by Idaho Communications, L.P. and Gem Communications, Inc. ("Petitioners"); Opposition to Petition to Deny filed April 4, 1995 ("Opposition") by KM; and Reply to Opposition to Petition to Deny filed April 28, 1995 ("Reply") by Petitioners.

<sup>5/</sup> See Opposition at 3-7, citing Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations, 6 FCC Rcd 5148 at ¶¶ 5 and 25 (1991)(when TV stations operate on Channel 14, the "few problems that have occurred have been resolved with little or no Commission intervention"; also, "most, if not all, channel 14 and 69 broadcast stations can coexist with land mobile operations on adjacent spectrum without objectionable interference

However, KM has been on the record since early in 1995 that it would be willing to change channels, either on the Commission's own motion or in response to this Petition, to accommodate Petitioner's concerns.

**B. The Pending Universal Settlement**

5. On September 15, 1995, the Commission announced that it would waive, for a period of ninety days, the limit on settlement payments made to parties dismissing applications as part of a universal settlement<sup>6/</sup> of a frozen comparative proceeding.<sup>7/</sup> On December 14, 1995, KM and ITN entered into a settlement agreement and filed a Joint Request for Approval of Universal Settlement (the "Joint Request"), which remains pending. Under the terms of the settlement, KM agreed to pay ITN \$200,000 upon approval of the settlement agreement, grant of the Joint Request, dismissal of ITN's application, and the grant of KM's application, and upon such actions becoming final orders. The Joint Request remains pending before the Commission.

6. On December 23, 1997, after exercising a contractual right to terminate the original settlement agreement due to the passage of time without Commission action, ITN filed a request to dismiss the Joint Request, but the Commission never acted upon that request. On August 20, 1999, and pursuant to an Amendment to Settlement Agreement executed on that date, ITN and

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and costly administrative intervention"), and 47 C.F.R. § 73.687(e).

<sup>6/</sup> See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 (released September 15, 1995).

<sup>7/</sup> The Commission imposed a freeze on comparative hearings, see FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), and Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (1994), in light of the holding in Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

KM jointly submitted a letter requesting that the Commission disregard the December 23, 1997 dismissal request, and promptly act on the Joint Request. KM notes that the Amendment to Settlement Agreement expressly provides that if the Commission finds that KM may not pay ITN a settlement payment in excess of ITN's documented out-of-pocket expenses, the settlement payment due to ITN would be limited to ITN's expenses, as they may determined by the Commission. Therefore, the Joint Request and settlement agreements pending before the Commission are not dependent on a Commission waiver of the limits on settlement payments in Section 73.3525 of the Commission's rules, 47 C.F.R. § 73.3525, and the settlement as pending before the Commission may be granted even without a waiver of any Commission rules. As a result of these settlement agreement filings, the Commission removed the mutually exclusive applications filed by ITN and KM from the September 28, 1999 closed broadcast auction.

**C. Filing Of The Original Petition, And Summary Thereof**

7. On July 10, 1996, prior to the July 25, 1996 freeze on petitions for rule making to change the analog Television Table of Allotments, KM filed its Petition, originally proposing to substitute analog Channel 21 for Channel 14 at Boise, Idaho. The substitution of an alternate channel for analog Channel 14 would resolve any potential interference to existing land mobile radio stations or studio-transmitter links ("STLs"), thereby alleviating the potential additional costs that may be associated with resolving any actual interference that might occur, and which would be unique to, the proposed operation on Channel 14. In the Petition, KM demonstrated that Channel 21 could be allotted to Boise in compliance with both the minimum distance separation requirements of the Commission's rules as well as the Commission's policies to protect future advance television station channel allotments. KM also showed that there was at least one



additional channel available for allotment in Boise for other parties that might have an interest in serving the Boise community at some future date, and therefore its allotment proposal and the amendment of its pending application to specify any alternate channel were entitled to cut-off protection under established Commission precedent.

8. The substitution of an alternate channel as requested by KM would resolve the potential land mobile radio interference concerns, facilitate the resolution of a comparative proceeding and remove an obstacle to the approval of a settlement agreement and related joint request pending before the Commission since December 1995. KM requested that it be allowed to amend its pending application to specify the new channel and retain cut-off protection, consistent with established Commission precedent. If KM had not requested this substitution, valuable Commission resources would be required to decide the land mobile radio petition on the merits, in connection with the originally proposed Channel 14 application. Also, KM potentially could end up spending an estimated \$500,000 to \$1,000,000 to resolve any actual land mobile radio interference that may occur, a solution that is undesirable to KM and the local land mobile radio industry when there are sufficient channels in the area to resolve this issue via a channel substitution.

**D. Subsequent Amendments To The Petition**

9. In the DTV Sixth Report,<sup>8/</sup> the Commission allotted Channel 21, the channel originally requested by KM in the Petition, as the DTV channel to be paired with analog Channel

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<sup>8/</sup> See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14588 (1997)("DTV Sixth Report").

4 in Boise,<sup>9/</sup> despite its stated intention in the DTV proceeding to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments" proposed in petitions for rule making filed before the July 25, 1996 adoption of the Sixth Further Notice of Proposed Rule Making<sup>10/</sup> in the DTV proceeding. See Sixth Report and Order at 14639. Since Channel 21 was no longer available for substitution for Channel 14, KM submitted its First Amendment to the Petition on May 15, 1997, requesting that the Commission substitute analog Channel 33 for Channel 14 at Boise, instead of Channel 21. The Commission has specifically stated that such amendment of the Petition is permitted, even when such an amendment is filed after July 25, 1996.<sup>11/</sup>

10. As stated above, the Second Amendment to KM's Petition was filed on October 19, 1999, after the Reconsideration Order was released, to demonstrate that KM's proposal analog channel substitution would not conflict with any current DTV station allotment, authorization, application or rule making petition. In addition, KM also requested in the Second Amendment that the Commission substitute analog Channel 39 for Channel 14 at Boise, instead of Channel 33, in order to avoid displacing LPTV station K33DT, Boise-Nampa-Caldwell, Idaho. As an LPTV

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<sup>9/</sup> See DTV Sixth Report, Appendix B at 14710.

<sup>10/</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996)("Sixth Further NPRM").

<sup>11/</sup> See, e.g., Amendment of Section 73.622(b) Table of Allotments, Digital Television Broadcast Stations (Salt Lake City, Ogden and Provo, Utah), MM Docket No. 99-197, Report and Order, FCC 00-175 at n.5 (released May 18, 2000)(finding that an amendment filed after July 25, 1999 to a petition for rule making to change an analog television allotment filed before July 25, 1996, to change the channel proposed to be substituted, was permitted, provided there is no adverse impact on DTV).

licensee itself, KM is sensitive to not unnecessarily displacing authorized LPTV operations.<sup>12/</sup> In short, KM would be happy with any alternate channel within the core spectrum (i.e., Channels 2 to 51) that the Commission cares to substitute for Channel 14, or even to continue on Channel 14 -- whatever it takes to get the now almost 5-year old settlement and/or petition for rule making process moving.

**E. KM Is Not Requesting A Second Paired Channel For DTV**

11. KM also notes that in the Second Amendment, it also deleted prior requests made in the Petition and First Amendment that a DTV channel be allotted as a second paired channel with any alternate channel substituted for analog Channel 14 at Boise. KM originally requested a second paired channel for DTV at a time when the issue of whether new analog television station permittees would receive a second DTV channel was an open issue. Now that the Commission, and recently the courts, have resolved this issue, KM understands and accepts that a second channel may not be allotted for DTV.

**II. THIRD AMENDMENT**

**A. No Interference To DTV Stations**

12. In the DTV proceeding, the Commission stated that it would open a filing window, announced by Public Notice, during which pending petitions for rule making to amend the analog Television Table of Allotments that would conflict with a DTV station allotment, authorization,

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<sup>12/</sup> KM notes that ITN, the competing applicant for Channel 14 at Boise, is the licensee of K33DT. The channel substitution requested in this amendment is not required by KM's settlement agreement with ITN, or by any other agreement between the parties, but rather was proposed by KM on its own initiative.

application or rule making proposal could be amended to eliminate the DTV conflict, or to demonstrate that no such conflicts with DTV stations exist.<sup>13/</sup> The Amendment Public Notice implements this Commission decision, permitting petitioner to amend their allotment petitions for rule making to demonstrate no interference to any DTV station allotment, authorization, application or rule making proposals.<sup>14/</sup>

13. As required by the Amendment Public Notice, the Engineering Report (as filed with the Second Amendment, and a copy attached hereto as Exhibit A) and the Engineering Supplement (filed herewith and attached as Exhibit B) demonstrate that analog Channel 39 may be allotted to Boise in compliance with the minimum distance separation requirements of the Commission's rules and policies protecting DTV station allotments, authorizations, applications and rule making petitions. The proposed Channel 39 allotment is approximately 555 kilometers from Portland, Oregon, and therefore was not subject to the advanced television freeze.

**B. The Proposed Substitution, With Cut-Off Protection, Is Consistent With Well-Established Commission Precedent**

14. The Commission has consistently allowed an additional channel to be allotted to a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the advance television freeze policy, and where additional channels are available for allotment in response to other expressions of interest. See, e.g., Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996); see also, Roseburg, Oregon, 6 FCC Rcd

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<sup>13/</sup> See DTV Second MO&O at ¶¶ 40-42 (1998).

<sup>14/</sup> See Amendment Public Notice at 4-6.

4369 (1991) and Copeland, Kansas, 5 FCC Rcd 7682 (1990) (allowing petitioners to amend their applications while retaining cut-off protection, where no other timely-filed expressions of interest were filed or, if such expressions of interest were filed, there was at least one additional allotment which could be made to accommodate those parties).

15. The Engineering Report demonstrates that at least one additional channel, Channel 50, is available for allotment to accommodate other expressions of interest in serving Boise, and KM submits (based on a preliminary review) that there likely are more alternate channels available in the Boise area for other expressions of interest (KM notes that it has not attempted to document the availability of additional alternate channels since Commission precedent has only required demonstration the one alternate channel is available). See Engineering Report. Accordingly, KM requests that it be authorized to amend its pending application to specify Channel 39, while retaining its cut-off protection. Such action would allow the Commission to resolve the potential land mobile radio concerns, and process the settlement agreement and Joint Request more promptly, thereby resolving the comparative proceeding and expediting the initiation of a new television service to Boise.

**C. KM Would Amend Its Application To Specify Any Alternate Channel Allotted, and Would Proceed Promptly to Construct The Station**

16. KM hereby states its present intention to amend its pending application to specify analog Channel 39, or any other alternate channel in the core spectrum that the Commission may elect to substitute for analog Channel 14, with cut-off protection for KM, and to proceed promptly to build a station upon the grant of a construction permit authorizing the construction of a station. The public interest would be served by potentially providing a third commercial local television

service licensed to Boise, and by conserving the Commission resources that otherwise would be required to resolve the land mobile radio petition to deny and to resolve this comparative proceeding.

### **III. CLASS A TELEVISION AND PROCEDURAL ISSUES**

#### **A. KM's Proposal Is Not Required To Protect Class A Proposals**

17. The Commission has expressly recognized that petitions for rule making to amend the analog Television Table of Allotments filed prior to the November 29, 1999 enactment of the Community Broadcasters Protection Act of 1999 (the "CBPA", i.e., the Class A legislation), such as KM's pending Petition to substitute an alternate channel for analog Channel 14 at Boise, are not required to protect -- and indeed are entitled to protection from -- Class A stations. See Achernar Broadcasting Company, MM Docket No. 86-440, Memorandum Opinion and Order, FCC 00-149 at ¶ 20 (released April 28, 2000) ("Achernar"). The Commission found that Section 336(f)(7)(A)(i) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 336(f)(7)(A)(i), prohibits the grant of a Class A license for a station that would "cause interference within the predicted Grade B contour ... of a station operating in analog format". Id. The Commission also expressly found that analog petitions for rule making filed prior to the enactment of the CBPA -- such as the analog Channel 39 substitution KM has had on file since October 19, 1999 (i.e., prior to the November 29, 1999 enactment of the CBPA) -- is entitled to protection where, as in KM's case with Boise, there is a settlement agreement pending that proposes "a reasonably ascertainable predicted Grade B contour". Id. Therefore, KM's Channel 39 allotment

substitution is entitled to protection from any secondary LPTV station that has filed a certification of eligibility for Class A status.

**B. The Commission May Substitute An Alternate Channel On Its Own Motion**

18. Achernar also makes clear that the Commission may substitute Channel 39, or an alternate channel, for analog Channel 14 at Boise on its own motion, under its authority under Section 316(a) of the Act, 47 U.S.C. § 316(a), and Section 1.87 of the Commission's rules, 47 C.F.R. § 1.87, even without the benefit of a petition for rule making (which KM has pending here) or even further proceedings. Id. at ¶¶ 17-19, 24-25 (finding that since the analog Television Table of Allotment has "ceased to function as an evolving mechanism", and as such modifying it is "an essentially material act designed purely to ensure the continuing accuracy of the table"). Indeed, KM suggested that the Commission take the approach of substituting an alternate channel of its choosing and on its own motion back in 1995, see Opposition at 7, even before filing the Petition in 1996, in the hopes of getting the matter moving toward resolution.

**IV. KM REQUESTS PROMPT COMMISSION ACTION**

19. KM respectfully requests that the Commission promptly issue an NPRM in this matter, and move expeditiously through the allotment process. The universal settlement with the competing applicant was originally filed almost 5 years ago, in December 1995, and the Amendment to Settlement Agreement, which does not necessarily require any waiver of the Commission's rules (such as the limitation on settlement payments to expenses), was filed and has been pending for almost a year. The pleading cycle for the Petition to Deny and the issues raised

therein by land mobile radio stations was completed over 4 years ago, and an amendment to KM's application responsive to a Commission inquiry letter on the matter was filed over 3 years ago. KM understands that processing of the Petition may have been delayed pending action in the DTV proceeding, but the DTV allotment table has been completed now for over 2 years, with the adoption of the DTV Second MO&O.

20. Accordingly, the time is ripe for action on the Petition, so that the public interest may be properly served, and before any further Commission or Congressional actions that may further complicate this matter. To speed issuance of an NPRM, KM is submitting as Exhibit C a draft NPRM for the Commission's consideration and use, as permitted by the Commission's Rules.<sup>15/</sup>

21. KM also reiterates its several requests -- which largely have gone without response from the Commission -- for a meeting with the relevant Commission staff representatives, subject to compliance with any ex parte requirements, to discuss this Petition.

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<sup>15/</sup> See 47 C.F.R. § 1.401(d). KM would be happy to provide the draft NPRM to the Commission staff on a diskette, upon its request.

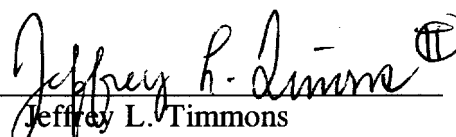


**V. CONCLUSION**

22. Wherefore, the above premises being considered, KM requests that this amendment be accepted; that Section 73.606(b), the analog Television Table of Allotments, be amended to substitute analog Channel 39 for Channel 14 at Boise, Idaho; and that KM be authorized to amend its pending application for analog Channel 14 at Boise, Idaho to specify operation on analog Channel 39, without subjecting the application to a new cut-off.

Respectfully submitted,

**KM COMMUNICATIONS, INC.**

By:   
Jeffrey L. Timmons  
Its Attorney

**IRWIN, CAMPBELL & TANNENWALD, P.C.**  
1730 Rhode Island Avenue, N.W., Suite 200  
Washington, D.C. 20036-3101

(202) 728-0400 telephone  
(202) 728-0354 facsimile

July 17, 2000

ENGINEERING REPORT  
TO AMEND SECTION 73.606  
OF THE FCC RULES BY SUBSTITUTING  
UHF-TV NTSC CHANNEL 39 FOR CHANNEL 14  
AT BOISE, IDAHO

SEPTEMBER 1999

COHEN, DIPPELL AND EVERIST, P.C.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION  
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington )  
 ) ss  
District of Columbia )

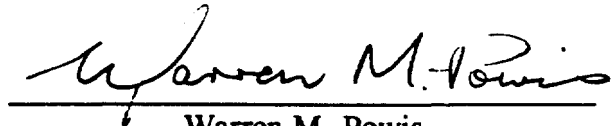
Warren M. Powis, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina, and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That his qualifications are a matter of record in the Federal Communications Commission;

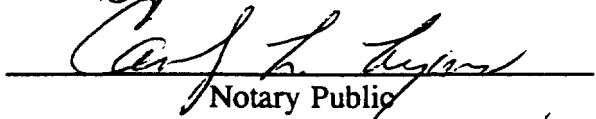
That the attached engineering report was prepared by him or under his supervision and direction and,

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Warren M. Powis  
District of Columbia  
Professional Engineer  
Registration No. 8339

Subscribed and sworn to before me this 20<sup>th</sup> day of September, 1999.

  
Notary Public

My Commission Expires: 2/28/2003

This engineering report has been prepared on behalf of KM Communications, Inc. ("KM"), applicant for a UHF-TV station on Channel 14 at Boise, Idaho (FCC File No. BPCT-941215KF). KM initially proposed to amend the TV Table of Allotments, Section 73.606 of the FCC Rules to substitute Channel 21 for Channel 14. Since the original DTV Table of Allotments adopted by the Commission in Appendix B of the Sixth Report and Order in MM Docket No. 87-168<sup>1</sup> conflicted with the previous Channel 21 request, KM requested an amendment of Sections 73.606 and 73.622 for NTSC Channel 33 and DTV Channel 29.

While KM's petition for rule making has been pending, the Commission had adopted the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in the DTV proceeding, and therefore, KM is submitting this update to its engineering to reflect the amended DTV Table of Allotments adopted therein. KM now proposes to substitute Channel 39 instead of Channel 33 so as not to displace a low power television station on Channel 33) for NTSC Channel 14 at Boise, Idaho, as an amendment to FCC Rule Section 73.606(b) as follows:

Boise, Idaho

Section 73.606(b); Substitute NTSC Channel 39 for Channel 14

The reference coordinates for the proposed new allotment are at the Deer Point antenna farm.

NAD-27

North Latitude: 43° 45' 18"

West Longitude: 116° 05' 52"

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<sup>1</sup>Sixth Report and Order, Adopted April 3, 1997, Released April 21, 1997.

The proposed Deer Point transmitter site is located 19.7 km north-northeast of Boise, Idaho, and complies with the FCC minimum distance separation required under Sections 73.610, 73.623, and 73.698 of the FCC Rules.

The proposed Deer Point operation will provide City Grade (80 dBu) service to Boise, Idaho.

#### Allocation Situation

Tables I and I-A show the allocation situation for the proposed NTSC Channel 39 allotment. The proposed allotment meets the required distance separations to all United States allotments.

Tables II and II-A show the allocation situation for a supplementary NTSC Channel 50 which would be available for allotment if other parties express an interest in serving Boise, Idaho. Accordingly, KM requests that it be permitted to modify its application to specify NTSC Channel 39 "without loss of cut-off protection".

The NTSC Channel 39 and 50 allotments are not subject to the ATV freeze for TV applications in that they are located 555.6 km from the Portland, Oregon, reference point (NL 45°31'06", WL 122°40'35").

#### Reasons for Channel Substitution

A petition to deny KM's Channel 14 application was filed by Idaho Communications, L.P. and Gem Communications, Inc. and the radio licensees listed in its Exhibit A ("Petitioners").

The proposed channel substitution will enable KM to operate without potentially impacting Public Safety and Commercial land-mobile radio station operations whose operating frequencies are located immediately adjacent to UHF-TV Channel 14. Furthermore, second harmonic effects of TV Channel 14 may fall across the aural STL spectrum used by FM transmitting stations on Deer Point

KM COMMUNICATIONS, INC.  
BOISE, IDAHO

PAGE 3

to receive their programming. Without a channel substitution, we estimate that KM may have to spend \$500,000 to \$1,000,000 to construct and operate on Channel 14 without causing interference to land-mobile and aural STL's.

Accordingly, the proposed Channel 39 NTSC substitution will enable KM to bring a new television service to the Boise area without inviting unnecessary potential interference problems to existing land-mobile radio and aural STL services and the associated expenses involved in mitigating these potential problems. The proposed channel substitution, therefore, would serve the public interest.

ENGINEERING REPORT  
ON BEHALF OF  
KM COMMUNICATIONS, INC.  
RE LONGLEY-RICE INTERFERENCE STUDIES  
NTSC CHANNEL 39, BOISE, IDAHO


JULY 2000

COHEN, DIPPELL AND EVERIST, P.C.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION  
WASHINGTON, D.C.

City of Washington )  
 ) ss  
District of Columbia )

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina, and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That the attached engineering report was prepared by him or under his supervision and direction and,

  
Warren M. Powis  
District of Columbia  
Professional Engineer  
Registration No. 8339

day of July, 2000.

Carl L. Myers  
Notary Public

My Commission Expires: 2/28/2003



This engineering report has been prepared on behalf of KM Communications, Inc., applicant for a new NTSC television station on Channel 14, Boise, Idaho. KM has a pending rule making on file to amend Section 73.606(b) of the rules to substitute Channel 39 for Channel 14. The substitution request was filed as a preferable means of resolving concerns for potential interference to land-mobile radio stations that operate on channels adjacent to TV Channel 14. The results of the Longley-Rice interference studies conducted on the proposed Channel 39 operation, attached as Table I, demonstrate compliance with FCC policy and rules and reflect that no interference will be caused to any digital television (DTV) station authorizations, allotments, applications, or petitions for rule making.

A study of predicted interference caused by the proposed NEW-TV service has been performed using a version of the Longley-Rice program as described in OET Bulletin No. 69 (July 2, 1997) and the Public Notice, "Additional Application Processing Guidelines for Digital Television (DTV)" (August 1998). The FCC's FORTRAN-77 code was modified only to the extent necessary (primarily input/output handling) for the program to run on a Windows98/Intel platform. Comparison of service/interference areas and populations indicates that this model closely matches the FCC's evaluation program. Best efforts have been made to use data and calculations identical to the FCC's program. Any slight differences are attributable to compiler, operating system and/or processor characteristics. The effect of any variance in calculated population values versus the FCC's program is minimized when differencing a given model's results, e.g., new interference equals total interference less baseline interference. The effect is further reduced for ratios of calculated population values, e.g., incremental population affected as a percent of total population served. The model employs the Longley-Rice propagation methodology and evaluates in grid cells of approximately 4 km<sup>2</sup> using

3-second terrain data sampled approximately every 0.1 km at one degree azimuth intervals with 1990 census centroids.

Baseline NEW-TV: No station on Channel 39.

Proposed Change: Directional antenna, Channel 39, 2570 kW, 812 meters HAAT,  
N 43°45'18", W 116°05'52"

TABLE I

NEW(TV), Boise, ID

Proposed Facilities

Channel 39, ERP 2570 kW (DA), HAAT 812 m, RCAMSL 2195 m

Coordinates: 43° 45' 18" NL

116° 05' 52" WL

(NAD27)

July 2000

<u>Station/Allotment</u>	<u>Channel</u>	<u>ERP</u> kW	<u>HAAT</u> Meters	<u>Distance/Bearing</u> From Proposed Site	<u>Additional IX</u>
DTV Allotment Nampa, ID	24	822.6	811	0.1 km/312.6°	0.0%
KIVI-DT Nampa, ID BPEDT-19991101AHJ	24	51.8	858.1	0.1 km/307.3°	0.0%

COHEN, DIPPELL AND EVERIST, P. C.

Federal Communications Commission

DA 00-\_\_\_\_\_

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.606(b)	)	MM Docket No. 00-_____
of the Commission's Rules, the	)	RM-9039
Table of Allotments for	)	
Television Broadcast Stations	)	
(Boise, Idaho)	)	

**NOTICE OF PROPOSED RULE MAKING**

Adopted:

Released:

Comment Date:

Reply Comment Date:

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by KM Communications, Inc. ("Petitioner") on July 10, 1996, as amended by Petitioner on May 15, 1997, October 19, 1999 and July 17, 2000, proposing the allotment of analog National Television System Committee ("NTSC") UHF television Channel 39 in substitution for analog NTSC UHF television Channel 14 at Boise, Idaho.<sup>1</sup> The allotment is potentially the community's third local

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<sup>1</sup> KM originally requested that Channel 21 be substituted for Channel 14, but amended its petition for rulemaking to request that Channel 33 be substituted for Channel 14 after Channel 21 was reserved as the DTV channel to be paired with NTSC Channel 4 at Boise, in the Commission's Sixth Report and Order in the DTV proceeding. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, FCC 97-115, 12 FCC Rcd 14588 (1997) ("Sixth Report and Order"). KM subsequently changed its requested channel from Channel 33 to Channel 39 so as not to displace

television service. If Channel 39 is substituted for Channel 14, Petitioner requests that its pending application for Channel 14 at Boise (File No. BPCT-941215KF) be amended to specify operation on Channel 39, with cut-off protection. Petitioner states its intention to amend its application to apply for Channel 39 at Boise if Channel 39 is allotted with cut-off protection.

2. In support of its proposal, Petitioner states that on December 15, 1994, Petitioner filed its application (File No. BPCT-941215KF) for a construction permit for Channel 14, and on February 2, 1995, the Commission released a Public Notice accepting Petitioner's application for filing and setting a March 20, 1995 cut-off date.<sup>2</sup> Petitioner states that International Television Network, Inc. ("ITN") was the only party to file a competing, mutually-exclusive application for Channel 14 at Boise before the cut-off date (File No. BPCT-950320KE). Since the applications were mutually exclusive, the applications originally could only be resolved by the burden and expense of a comparative hearing and, at that time, there was no basis upon which to either designate the applications for a comparative hearing or to otherwise resolve the mutually exclusive applications.<sup>3</sup> However, Petitioner states that, pursuant to the Commission's ninety day waiver in late 1995 of the limit on settlement payments made to parties dismissing applications as part of a universal settlement of a frozen comparative proceeding,<sup>4</sup> Petitioner and ITN entered into a settlement agreement and filed a Joint Request for Approval of Universal Settlement (the "Joint Request") on December 14, 1995, whereby ITN agreed to dismiss its competing application; the Joint Request remains pending before the Commission.<sup>5</sup>

3. Petitioner also states that a petition to deny was filed against its application by certain land mobile radio licensees, claiming that Petitioner's proposed Channel 14 operation may

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an existing Low Power Television ("LPTV") station from Channel 33.

<sup>2</sup> See Public Notice, Report No. A-188 at 2 (released February 2, 1995).

<sup>3</sup> The Commission has imposed a freeze on comparative hearings, see FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), and Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (1994), in light of the holding in Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

<sup>4</sup> See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 (released September 15, 1995).

<sup>5</sup> On or about December 23, 1997, ITN exercised a contractual right to terminate the settlement agreement, and filed a letter with the Commission requesting that the Joint Request be dismissed; however, the Commission did not dismiss the Joint Request, which remains pending. On August 20, 1999, KM and ITN entered into an amendment to the original settlement agreement, whereby ITN revoked its termination of the original settlement agreement, among other changes, and filed a letter with the Commission requesting action on the Joint Request.

cause objectionable interference to their existing operations, to which Petitioner filed an opposition and the petitioners a reply;<sup>6</sup> and that the Commission requested further information on this issue, to which Petitioner responded with a timely-filed, responsive amendment. Petitioner states that the proposed substitution of Channel 39 for Channel 14 would resolve the potential land mobile radio interference concerns, and therefore would facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, which otherwise may be delayed pending the Commission's resolution of the land mobile radio petition. Furthermore, Petitioner estimates that construction on Channel 14 may require an additional \$500,000 to \$1,000,000, to resolve the potential land mobile radio interference concerns that would be avoided by the proposed substitution of Channel 39 for Channel 14, and therefore such economic costs could be saved and the public interest served by the substitution.

4. Petitioner asserts that the allotment of Channel 39 at Boise may be made in compliance with the Commission's technical requirements and its policies for protecting future advance television allocations,<sup>7</sup> including the Commission's DTV rules and policies adopted in the Sixth Report and Order, as amended on reconsideration.<sup>8</sup>

5. Moreover, Petitioner contends that Commission precedent and policy has been to add an additional channel for a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the ATV freeze policy, and where additional channels are available for allotment in response to other expressions of interest, citing Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996). Petitioner also contends that the Commission has allowed petitioners to retain cut-off protection for their pending applications in similar circumstances, where no other timely-filed expressions of interest are filed or, if such expressions of interest are filed, there is at least one additional allotment which can be made to accommodate those parties. Id.; see also, Copeland, Kansas, 5 FCC Rcd 7682 (1990);

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<sup>6</sup> See Petition to Deny filed March 20, 1995, by Idaho Communications, L.P. and Gem Communications, Inc.; Opposition to Petition to Deny filed April 4, 1995 by KM; and Reply to Opposition to Petition to Deny filed April 28, 1995 by petitioners.

<sup>7</sup> Boise is approximately 555 kilometers from the Portland, Oregon freeze area, and thus is well beyond the area subject to the advance television freeze. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 Fed. Reg. 28346, July 29, 1987.

<sup>8</sup> See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, FCC 98-315, 14 FCC Rcd 1348 (1998)("DTV Reconsideration Order").

Roseburg, Oregon, 6 FCC Rcd 4369 (1991). Accordingly, Petitioner claims that the substitution of Channel 39 for Channel 14, with cut-off protection, would resolve the potential land mobile radio interference concerns, facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, thereby expediting authorization of a new television service for Boise, and thus providing the public with access to additional stations.

6. We believe Petitioner's proposal warrants consideration because the substitution of Channel 39 for Channel 14 at Boise, Idaho, could potentially provide the community with its third local television broadcast service. In addition, the proposed allotment substitution would resolve the potential land mobile radio interference concerns and speed the resolution of the comparative proceeding, by resolving an obstacle to the approval of the settlement agreement and the Joint Request that have been pending before the Commission since December 1995. Petitioner's amendment of its petition to request Channel 39 instead of Channel 21 would also be consistent with the Commission's stated goal to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments" in petitions for rulemaking filed before the July 25, 1996 adoption of the Sixth Further NPRM in the DTV proceeding,<sup>9</sup> by resolving a conflict with a proposed NTSC allotment created by the adoption of the DTV allocation table in the Sixth Report and Order.<sup>10</sup> An engineering analysis has determined that Channel 39, with zero offset, can be allotted to Boise in compliance with the Commission's minimum distance separation requirements at city reference coordinates.<sup>11</sup> Since it appears that there are at least two additional UHF television channels available for other expressions of interest at Boise, we shall propose to allow petitioner to amend its application to specify operation on Channel 39 in lieu of Channel 14, with cut-off protection.

7. Accordingly, we shall seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u> _____	<u>Present</u>	Channel No. <u>Proposed</u>
_____		

<sup>9</sup> See Sixth Report and Order at ¶ 112 (citing Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996) ("Sixth Further NPRM").

<sup>10</sup> See Sixth Report and Order, Appendix B at B-18 (allotting Channel 21 as the DTV channel to be paired with NTSC Channel 4 at Boise).

<sup>11</sup> The reference coordinates for Channel 39 at Boise are North Latitude 43° 45' 18" and West Longitude 116° 05' 52".

Boise, Idaho

2, \*4+, 7, 14

2, \*4+, 7, 39

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before   [date]  , and reply comments on or before   [date]  , and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner, or its counsel, as follows:

Jeffrey L. Timmons, Esq.  
 Irwin, Campbell & Tannenwald, P.C.  
 1730 Rhode Island Avenue, N.W., Suite 200  
 Washington, D.C. 20036-3101  
 (Counsel for KM Communications, Inc.)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact   [name]  , Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION



John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## CERTIFICATE OF SERVICE

I, Tracy Trynock, hereby certify that on this 17th day of July, 2000, copies of the foregoing "Amendment to Petition for Rule Making" have been served by hand delivery (\* denotes hand delivery) or first class mail, postage prepaid, upon the following:

Barbara Kreisman, Chief\*  
Video Services Division  
Federal Communications Commission  
445 12th Street, S.W., Room 2-A666


Clay Pendarvis, Chief\*  
Television Branch  
Federal Communications Commission  
445 12th Street, S.W., Room 2-A662  
Washington, D.C. 20554

John A. Karousos, Chief\*  
Allocations Branch  
Federal Communications Commission  
445 12th Street, S.W., Room 2-A325  
Washington, D.C. 20554

Barry D. Wood, Esq.  
Wood, Maines & Brown  
Counsel to International Television Network, Inc.  
1827 Jefferson Place, N.W.  
Washington, D.C. 20036

John S. Reardon, Esq.  
Keller & Heckman, L.L.P.  
Counsel to Idaho Communications, L.P.  
and Gem Communications, Inc.  
1001 G Street, N.W., Suite 500 West  
Washington, D.C. 20001

John S. Reardon, Esq.  
Counsel to Idaho Communications, L.P.  
and Gem Communications, Inc.  
1150 18th Street, N.W., Suite 250  
Washington, D.C. 20036

  
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Tracy Trynock